

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-214122

DATE: February 27, 1984

MATTER OF: Key Airlines

DIGEST:

1. A late hand-carried bid may not be considered unless there is a showing that wrongful government action was the paramount cause of the lateness.
2. The award of a contract is not improper merely because a contracting agency failed to send a bidder a solicitation where there is no evidence to suggest that the agency's failure was deliberate.

Key Airlines protests the award of a contract to Casper Air Service to furnish a twin-engine aircraft under invitation for bids No. 804-14 issued by the Department of the Interior (DOI). The firm complains that the contracting officer improperly rejected its bid as late.

We summarily deny the protest.

Key Airlines alleges that it should not be faulted for the fact that its bid was 1/2 hour late since the firm is listed on a DOI bidder's list and yet failed to receive a copy of the solicitation from DOI. Key Airlines asserts that it was notified of the impending procurement by a nongovernment source only 1 day before bid opening. The firm notes that it made every effort to submit its bid on time by flying the bid to the place of bid opening on the due date.

It is the bidder's responsibility to assure timely arrival of its bid at the place of bid opening, and late receipt generally requires rejection of the bid. Jarrett S. Blankenship Co., B-213270, October 25, 1983, 83-2 CPD 504. While a solicitation's late bid clause permits acceptance of a late bid under limited circumstances, the clause does not apply to hand-carried bids.

See Federal Procurement Regulations § 1-2.201(31) (1964 ed.). A late hand-carried bid may be considered, however, where it can be shown that wrongful government action was the sole or paramount cause of late receipt. Visar Company, Inc., B-208701, January 31, 1983, 83-1 CPD 100. "Wrongful government action" in this context means affirmative action on the government's part, such as improper or conflicting delivery instructions, that made it impossible for the hand-carried bid to be timely delivered to the bid opening location. See, e.g., Scot, Incorporated, 57 Comp. Gen. 119 (1977), 77-2 CPD 425. There is no allegation here of any government impropriety that would fall within that exception.

There is also no evidence to suggest that DOI deliberately neglected to send Key Airlines a copy of the solicitation. We have recognized that the inadvertent failure of a procuring agency to solicit a possible competitor does not invalidate an award. See Thomas G. Morrow, B-208878, October 7, 1982, 82-2 CPD 316 (concerning a contracting agency's failure to send a solicitation to the incumbent contractor) and cases cited therein. We have been informally advised in this case that 10 timely bids were received in response to the solicitation and Key Airlines does not suggest that it was deliberately excluded from the competition. We conclude therefore that rejection of Key Airlines' late bid here was proper.

The protest is denied.

Milton J. Arosow
for Comptroller General
of the United States